Khamis & 3 others v Muchuria & 13 others; Sangoro (Defendant) (Civil Suit E034 of 2025) [2025] KEHC 13069 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEHC 13069 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL SUIT E034 OF 2025

G MUTAI, J

JULY 22, 2025

BETWEEN

TAKDIR KHAMIS & 3 OTHERS & 3 OTHERS ..... PLAINTIFF

AND

TOM MUCHURIA & 13 OTHERS & 13 OTHERS ..... DEFENDANT

AND

MICHAEL SANGORO ..... DEFENDANT

RULING

1. This is a ruling on an application dated 23rd July 2025 vide which the 15th Defendant/Applicant seeks to review the ruling that this Court delivered on the 18th day of July 2025, on the grounds, inter alia, that there are errors apparent on the face of the record which are causing him severe hardships.

2. The application is brought under the provisions of Order 45 Rules 1(1)(a) and 2 of the Civil Procedure Rules, 2010.

3. The applicant contends that what the court barred when the application dated 1st April 2025 was pending was the expulsion of the plaintiffs from the Club. During the pendency of the ruling, the Club, in its annual general meeting, made resolutions which are incapable of being reversed, such as resolving that members receive reimbursements for the payments they had previously made in respect of an aborted swimming pool project. Mr Sangoro stated that whereas the Court barred the implementation of the resolutions reached during the annual general meeting, it did not expressly reinstate the officials whose term in office had lapsed. He further stated that, having served for two terms, he no longer wished to remain an official of the Club and that the effect of the order which this Court issued was to compel him to serve in a position he no longer wanted. In his view, the decision of the Court effectively reinstated and placed an undue burden on him. Mr Sangoro also contended

that he was in danger of being held to be in contempt of court for no fault of his own. He therefore prayed that the application be allowed.

4. The defendants supported the application.

5. The plaintiffs opposed the application. They urged that the application was a grave abuse of the Court process and was incurably defective, as no copy of the sought-to-be-reviewed had been annexed. In their view, as articulated by their counsel, the failure to do so rendered the application a non-starter. They contended that the defendants had preferred an appeal, and for that reason, review was not available to them. Further, it hadn't been demonstrated that there was an error apparent on the face of the record, nor was there a discovery of a new matter or evidence.

6. The plaintiffs further submitted that the application before the Court did not meet the threshold for review within the meaning of Order 45 of the Civil Procedure Rules.

7. I have read the application, the affidavit in support thereof and the annexures, as well as the responses thereto. I have also considered the submissions of the parties. In my view, the issue for determination is whether the court should review its orders.

8. Review is provided for in Section 80 of the *Civil Procedure Act* which states that: -

> " Any person who considers himself aggrieved-
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> (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit".

9. The foregoing is given effect by Order 45 of the Civil Procedure Rules, which provides as follows: -

> " (1) Any person considering himself aggrieved: -
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review"

10. Review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order. In Lakesteel Supplies vs Dr Badia and Anor, Kisumu HCCC No. 191 of 1994, Kuloba J (as he then was), stated as follows regarding review: -

> The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the ruling was made."

11. The Defendants filed a notice of appeal against the ruling dated 18th July 2025. The applicant denies that he was a party to the said notice. The court exercising its discretion to review has the duty to confine itself so as to eliminate the possibility of sitting on appeal against its own decision. See Lakesteel Supplies vs Dr Badia and Another (supra).

12. Having considered this matter, I find difficulty placing the ground of review sought by the applicant within the meaning of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.

13. This Court must refuse invitations to review, vary or rescind its own decision except to give effect to its intention at the time the decision was made, for to depart from this would be a most dangerous course in that it would open the doors to all and sundry to challenge the correctness of the decisions of the Court based on arguments thought of long after the judgement or decision was delivered or made. Such arguments, in my view, would be better preferred in an appeal as opposed to a review. In Kithoi v Kioko (1982) KLR 177 the Court of Appeal stated that: -

> " ...the Civil Procedure Rules Order XLIV demands inter alia, that an application for review must be based in the discovery of new and important evidence which was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake on the face of the record or for any other sufficient reason. The application for review must strictly prove the grounds for review, except for review on the ground of mistake or error apparent on the record, falling which the application will not be granted." (Emphasis added)

14. The Court of Appeal had the following to say in an application for review, in the National Bank of Kenya Ltd vs Ndungu Njau (1997) eKLR: -

> "A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."

15. I haven't seen an error that is apparent on the face of the record and that does not require a long, drawn-out process of reasoning. The facts which have been relied on by the applicant were within the knowledge of the parties at the time I made my decision and could have been brought to my attention with the exercise of some diligence.

16. I also do not see any sufficient cause on which a review may be granted. I say so because I am not persuaded that the reasons offered by the applicant amount to 'sufficient reason' within the meaning of the rules cited above, nor is it analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. My finding is fortified by the holding in the case of Evan Bwire vs Andrew Nginda (2000) eKLR where the court held that "an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh."

17. I am therefore unable to agree with the applicant that a case for review has been made.

18. I find no merit in the application. The same is dismissed.

19. My view is that all the concerned parties would be better off if the matter were heard on the merits and a determination made thereafter. For that reason, this Court will hear the matter on a priority basis.

20. The upshot of the foregoing is that I make the following Orders:

    i. The Notice of Motion Application dated 23rd July 2025 lacks merit and is dismissed.

    ii. The costs of the Application shall abide the outcome of the suit.

21. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 22ND DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Amakobe, for the 1st to 5th, 7th to 9th and 11th to 14th Defendants;

Mr Muchiri, for the 6th and 10th Defendants;

Mr Muchiri, holding brief for Mr Sangoro, the 15th Defendant/Applicant;

Mr Gikandi, for the Plaintiffs/Respondents; and

Arthur - Court Assistant.